

[Boytin v. Pennsylvania Power & Light Co., 94-ERA-32 \(ARB May 31, 1996\)](#)

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IN THE MATTER OF

CHARLES J. BOYTIN,
ERA-32

CASE NO. 94-

COMPLAINANT,

DATE: May 31, 1996

v.

PENNSYLVANIA POWER & LIGHT COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1]

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). The parties submitted a Settlement Agreement and Full and Final Release of Claims seeking approval of the settlement and dismissal of the complaint subsequent to the Administrative Law Judge's (ALJ) Recommended Decision and Order on Remand (R.D. and O.) issued on February 23, 1996. The request for approval is based on an agreement entered into by the parties, therefore, we must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. See ¶ 6. For the reasons set forth in *Poulos v. Ambassador Fuel Oil*

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Co., Inc., Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2, we have limited our review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of the Complainant's allegations that Respondent violated the ERA.

Paragraph 7 contains language which provides that the Complainant shall keep the terms of the Settlement Agreement confidential unless disclosure is required by law, except to his spouse, attorneys and professional tax advisor. We likewise construe this confidentiality provision as not restricting any disclosure where required by law. *McGlynn v. Pulsair Inc.*, Case No. 93-CAA-2, Sec. Final Order Approving Settlement, June 28, 1993, slip op. at 3. The parties' submissions including the agreement become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.[2] See *Debose v. Carolina Power & Light Co.*, Case No. 92-ERA-14, Ord. Disapproving Settlement and Remanding Case, Feb. 7, 1994, slip op. at 2-3 and cases there cited.

We find that the agreement, as here construed, is a fair, adequate and reasonable settlement of the complaint. Accordingly, we APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE.

SO ORDERED.

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member

[ENDNOTES]

[1] On October 23, 1995, the Secretary issued a Remand Order in this case for the purpose of determining damages and other appropriate relief for Complainant. On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute and these regulations to the newly created Administrative Review Board (ARB). 61 Fed. Reg. 19978 (May 3, 1996) (copy attached). The ARB has reviewed the entire record in this case in rendering this final order.

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions. A copy of the final procedural revisions to the regulations (61 Fed. Reg. 19982), implementing this reorganization is also attached.

[2] Pursuant to 29 C.F.R. § 70.26(b), submitters may

designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. §70.26(h).